

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: July 04, 2017
% *Judgment Delivered on: July 11, 2017*

+ **RSA 212/2014**

SHIVAN MANDAL Appellant

Through: Mr.Yogesh Chhabra, Advocate.

versus

MURARI MISHRA Respondent

Through: Mr.V.P.Katiyar, Advocate

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

JUDGMENT

RSA 212/2014

1. This Regular Second Appeal under Section 100 of Code of Civil Procedure has been filed by the appellant (plaintiff in Civil Suit No.399/2012) assailing the judgment of the First Appellate Court in RCA No.18/2013 whereby the judgment passed by the learned Trial Court dismissing the counter-claim of the respondent herein has been set aside and the counter-claim has been decreed by granting a decree of mandatory injunction.

2. Vide impugned judgment and decree dated 7th July, 2014 the respondent/counter-claimant has been held entitled to recover the possession of Jhuggi No.195-A, T-Huts, Camp No.1, Bhim Nagar, Delhi as shown in site plan Ex.PW-1/D1.

3. The substantial question of law raised in this appeal is “Can a person acquire title by reason of acquiescence or estoppels on the part of the opposite side?”

4. In brief the facts of the case are that the Civil Suit No.399/2012 was filed by the appellant/plaintiff Shivan Mandal impleading the respondents as defendants seeking a decree for permanent injunction. As per averments made in the plaint the appellant/plaintiff claimed himself to be owner in possession of Jhuggi No.195, T-Huts, Camp No.1, Bhim Nagar, Delhi (suit property). He pleaded that he was residing in the said jhuggi for a long time. On 13th May, 2010 the defendants along with one another associate came to the jhuggi and threatened him to vacate the jhuggi by 20th May, 2010 though defendants have no right or title in the said property hence he prayed for a decree of permanent injunction restraining the respondents from dispossessing him from the suit property.

5. The suit was contested by the defendants pleading that defendant No.1 is the owner of the suit property. The correct number of the Jhuggi is 195-A, T-Huts, Camp No.1, Bhim Nagar, Delhi. The defence taken by the defendants was that they had had gone to their native place on 1st March, 2008 for solemnizing the marriage of daughter of defendant No.1 and at that time, he delivered the possession of Jhuggi No.195-A, T-Huts, Camp No.1, Bhim Nagar, Delhi to the appellant/plaintiff. The appellant/plaintiff was only a licensee in the said jhuggi without paying any license fee. When they returned from their native place on 1st May, 2008, the appellant/plaintiff refused to restore the possession and they were

compelled to live in a rented house and thereafter the matter was reported to Police Station Nangloi on 23rd July, 2008 and 12th September, 2008 as well to PS Mianwali Nagar on 18th May, 2010 and 29th June, 2010. Despite that the jhuggi was not returned, rather the appellant/plaintiff obtained electricity connection in the jhuggi in his name by giving the incorrect number of jhuggi i.e. Jhuggi No.195, T-Huts, Camp No.1, Bhim Nagar, Delhi. The electricity connection was installed in Jhuggi No.195-A, T-Huts, Camp No.1, Bhim Nagar, Delhi as Jhuggi No.195, T-Huts, Camp No.1, Bhim Nagar, Delhi already had electricity connection in the name of Ram Chet. While filing the written statement, separate counter-claim was also filed by respondent/defendant No.1 claiming himself to be the absolute owner of Jhuggi No.195-A, T-Huts, Camp No.1, Bhim Nagar, Delhi and seeking restoration of the possession of the said jhuggi to him.

6. Learned Trial Court dismissed the Civil Suit No.399/2012 as well the counter-claim. The relief sought by filing the counter claim was declined by the learned Trial Court while disposing of issues No.4 and 5 as under:-

“Issue No.4: Whether the defendants are entitled to the relief of mandatory injunction as prayed for? OPD; and

Issue No.5: Whether the defendants are entitled to the relief of permanent injunction as prayed for? OPD

12. Both the issues are taken up together, being interconnected, defendant no.1 in his counterclaim has prayed that plaintiff may be directed to deliver back peaceful possession of Jhuggi No.195-A, Camp No.1, T-huts, Bheem Nagar, Delhi and may be restrained from parting with the possession of the said property.

Admittedly, defendant no.1 is not in possession of Jhuggi No.195-A, Camp No.01, T-Huts, Bheem Nagar, Delhi.

In his cross-examination, defendant no.1/DW1 has said that he does not have any title document qua Jhuggi No.195-A.

In these circumstances, when defendant no.01 is neither in the possession of Jhuggi no.195-A nor he has title documents of the said property, he has no right, title or interest in Jhuggi No.195-A, Camp No.01, T-Huts, Bheem Nagar, Delhi.

In view of above said discussions, it is held that defendants are not entitle to the relief of mandatory injunction as prayed for.”

7. The appellant/plaintiff did not file any appeal challenging the dismissal of Civil Suit No.399/2012. But the judgment passed by the learned Trial Court dismissing the counter-claim was challenged by the defendant No.1/counter claimant by filing RCA No.18/2013 which was allowed and impugned herein.

8. The counter-claim has been decreed by the learned SCJ for the following reasons:-

“13. In view of the above discussion, the title of Jhuggi No.195-A in favour of the defendant/appellant was not in issue. The appellant was entitled for mandatory injunction which involves the decision on the point that whether issue in question was whether the Jhuggi was handed over to the respondent/plaintiff on license basis or it was sold out to him. While dismissing the suit of the plaintiff it was rightly observed by Ld. Civil Judge that the respondent/plaintiff had failed to prove any document of sale of Jhuggi No.195-A in his favour. Ld. Trial court committed error in arriving the conclusion that the

appellant has failed to prove his ownership in the absence of any documents. As discussed above, the respondent himself had admitted the ownership of Jhuggi No.195-A in favour of the appellant/defendant. This finding against the respondent has become final as he preferred to not to challenge the impugned order.

14. Hence, now the question remains to be considered is whether the Jhuggi No.195-A was given on license basis.

15. The stand of the respondent/plaintiff through out remained contradictory. His suit was seeking injunction against the dispossession from the Jhuggi No.195 of which he claimed to be the owner since long. In his cross examination, he deposed that he is not in possession of Jhuggi No.195-A, however in reply to the counter claim of the appellant/defendant, he submitted that Jhuggi No.195-A was sold out to him by the appellant. It was contended by the appellant in the counter claim that jhuggi no.195 is adjoining to Jhuggi no.195-A & belonged to Ram Chet. The respondent denied in his replication as well as reply to the counter claim about ownership of Ram Chet with regard to Jhuggi no.195. In fact, he tried to mislead the court by taking two different pleas.

16. Further, the site plan was confronted during his cross examination showing Jhuggi No.178 at north side in possession of Raj Kumar and at south side the Jhuggi No.127 in possession of Naveen and at the back of Jhuggi No. 195 and Jhuggi No.195-A, the jhuggi no.21 in possession of Radhey Shyam & Jhuggi No.195 in possession of Ram Chet. He admitted that site plan Ex.PW-1/D1 is correct which necessarily implies that there is a jhuggi no.195- A adjoining to Jhuggi no.195. It seems to mislead the court as he made out the case of Jhuggi No.195 knowingly that he was in possession of Jhuggi No.195- A. This fact of his possession over Jhuggi No.195-A is further confirmed from the testimony of DW-3 Shri Ram Chet who deposed that Jhuggi No.195-A is

adjoining to his Jhuggi No.195. He proved his possession and residence over the Jhuggi No.195 by proving the photocopy of ration card, Election I-card and Electricity Bill showing his address as Jhuggi No.195. The testimony of DW-3 was not cross examined on the above stated depositions of his testimony meaning thereby the respondent/plaintiff admitted that Shr Ram Chet was residing at Jhuggi No.195 and Jhuggi No.195-A is adjoining to Jhuggi No.195.

17. Further, DW-1 in his testimony deposed that due to marriage of his daughter fixed for 08.03.2008, he went to his native village at Bihar on 01.03.2008 and handed over/entrusted the possession of the Jhuggi to the respondent/plaintiff for the time being on license basis at his back and upon his return, this possession was not handed over by the respondent/plaintiff to the appellant. The factum of marriage on 08.03.2008 is not disputed. In the cross examination of DW-1 i.e. appellant, it was deposed that he did not enter any written agreement with the respondent/plaintiff before leaving for his native place. Ld. Counsel for the respondent argued that there was no proof of license basis but in such circumstances, I am of the view that in this informal arrangement, no one could ever imagine to enter into any kind of written agreement but not vice versa, meaning thereby had the appellant at that time had sold the property, there would have been written registered documents. Any immovable property cannot be sold without registering the documents. It is natural and quite probable that the keys would have been handed over to take care of the house during the time, the appellant wished to visit his native place. It seems that the respondent/plaintiff developed bad intentions towards the Jhuggi of the appellant later on. Feeling aggrieved, several police complaints were filed by the appellant and as a counter blast to give shape to ill design, the plaintiff/respondent filed the false and frivolous suit which was rightly dismissed by Ld. Civil court.

*18. In view of the above said discussion, it is proved that Jhuggi No.195-A was handed over to the respondent on license basis and intentions of the termination of the licensee was conveyed to the plaintiff/respondent by the appellant by lodging the complaints to the concerned police station as well as filing the counter claim. It is well settled that in case of termination of license, the possession of the property can be sought by way of mandatory injunction. Thus, it is held that the appellant is entitled to recover the possession of the Jhuggi No.195-A, T-Huts, Camp No.1, Bhim Nagar, Delhi as shown in site plan Ex.PW-1/D1. Thus, the appeal is allowed. The impugned judgment dated 20.09.2013 is partly set aside with regard to the dismissal of the counter claim. Decree sheet be prepared accordingly. Copy of this judgment be sent to the Ld. Trial Court along with the TCR. Appeal file be consigned to **Record Room** after necessary compliance.”.*

9. To summarize, the findings of the learned Trial Court on issues No.4 and 5 pertaining to the counter-claim have been set aside by the learned Appellate Court for the reasons:

- (i) It has been submitted by the plaintiff that jhuggi was sold to him by defendant/counter-claimant as he was in need of money for purpose of marriage of his daughter. Thus, he has admitted ownership of the defendant/counter-claimant.
- (ii) While dismissing the counter-claim it was observed by the learned Trial Court that the defendant/counter-claimant was not in possession of the suit property and was not having any title documents but in view of the order 8 Rule (5)(1) CPC every allegation of fact in the plaint if not denied specifically shall be taken to be admitted.

(iii) In this case the ownership of Jhuggi No.195-A, T-Huts, Camp No.1, Bhim Nagar, Delhi in favour of defendant/counter-claimant (defendant No.1) has not been specifically denied hence deemed to be admitted.

(iv) In view of the Section 58 of the Indian Evidence Act, 1872 admitted facts need not be proved.

10. The instant appeal has been preferred by the appellant against the reversal of the judgment of the learned Trial Court by the First Appellate Court contending that the counter-claim has been decreed without any title document in favour of the defendant/counter-claimant being proved.

11. Mr.V.P.Katiyar, learned counsel for the respondent has filed written submissions, additional written submissions and also made oral submissions. Not only in the written submissions but also during the course of arguments his emphasis was on the jhuggi number. It has been contended that the civil suit praying for decree of permanent injunction was filed in respect of the Jhuggi No.195, T-Huts, Camp No.1, Bhim Nagar, Delhi, as mentioned in the plaint, whereas the subject matter of litigation is Jhuggi No.195-A, T-Huts, Camp No.1, Bhim Nagar, Delhi. He has contended that Jhuggi No.195, T-Huts, Camp No.1, Bhim Nagar, Delhi belongs to Ram Chet who has been examined as DW-3 to prove it. The reasoning given by the First Appellate Court for decreeing the counter claim is that ownership of respondent was never denied rather it was admitted by the appellant/plaintiff that the Jhuggi in dispute was purchased by him for

₹10,000. This being an admitted fact, ownership need not required to be proved further.

12. It is admitted case of the parties that none of them is having the title documents in respect of the suit property. DW-3 Sh. Ram Chet was also not having any title document. In his cross examination, he has stated as under:-

“The defendant had invited me in the marriage ceremony of his daughter. However, I could not attend the same. I do not remember the year of the said marriage. I do not remember as to when the defendant returned from his native place after solemnization of marriage of his daughter. I know the plaintiff for the last 2-3 years. I do not have title documents of jhuggi no.195. I have not seen the title documents of jhuggi no.195A in the name of the defendant. I have come to depose at the instruction of defendant. I do not know about the contents of my affidavit. It is wrong to suggest that I have no personal knowledge about the present suit. It is wrong to suggest that I am deposing falsely.”

13. It is the case of the respondent/counter claimant that he left Delhi on 1st March, 2008 for his native place to perform the marriage of his daughter. While leaving for his village he handed over the possession of the jhuggi to the appellant/plaintiff.

14. The civil suit has been filed on 20th May, 2010. The counter claim has been filed on 26th October, 2010 claiming title but no title document was filed or proved. In case the counter claimant was not having any title in respect of the suit property, on being dispossessed

from the suit property, his remedy was to file a suit under Section 6 of the Specific Relief Act, which provides as under:-

6. Suit by person dispossessed of immovable property.—

(1) If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.

(2) No suit under this section shall be brought—
(a) after the expiry of six months from the date of dispossession; or
(b) against the Government.

(3) No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.

(4) Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.’

15. Admittedly, no such relief was sought within six months from the date of dispossession.

16. During the course of hearing, learned counsel for the respondent has specifically being questioned as to what action was taken by the respondent/defendant No.1 on 1st May, 2008 when he returned to Delhi from his native place after a period of two months and was not handed over possession by the appellant/plaintiff. Learned counsel for the respondent has submitted that he took a premises on rent and thereafter made various police complaints. Admittedly no PCR call

was made by the respondent/counter-claimant when he was not permitted to enter his jhuggi. The first report was made to the police after lapse of about two and a half months. No steps were taken by him to at least recover his goods from the jhuggi. While leaving for the native place, all the vital documents belonging to him like ration card, electricity bills and other belongings must have been left by him in the jhuggi as he was going to the native place only to perform the marriage of his daughter. None of the defence witnesses who were neighbours have deposed that on 1st May, 2008 there was any quarrel over the jhuggi when respondent/counter claimant returned from his native place and the appellant/plaintiff did not permit him/his family to enter the jhuggi.

17. As per the case of the respondent/counter-claimant he took the premises on rent and has been residing there since then. Without bringing the matter to the notice of Pradhan of the Jhuggi Cluster or collecting the neighbours or informing the PCR, overnight the counter claimant could not have taken the premises on rent and purchase all household articles when even for the solemnization of marriage he had to arrange for funds. It is also not his case that he applied for duplicate ration card or other necessary document which he might be holding in respect of his possession in the suit property.

18. The dispute over the jhuggi number of the suit property i.e. whether it is Jhuggi No.195 or 195-A or whether Jhuggi No. 195 belongs to some other person i.e. Ram Chet, need not be gone into in this Second Appeal for the reason that the identity of the jhuggi is not in dispute. Even otherwise, Sh.Ram Chet had also deposed that he

does not have any titled in respect of jhuggi No.195. Thus, jhuggi number becomes immaterial. Once the respondent/counter-claimant has admittedly handed over the possession of the jhuggi to the plaintiff as licensee, this Court need not examine this aspect especially when the suit for permanent injunction filed by the appellant/plaintiff has been dismissed and that order has attained finality.

19. The counter-claim cannot be equated with a suit under Section 6 of the Specific Relief Act, 1963 which could have been filed on the basis of the previous possession without proving the title within the period specified there under i.e. six months from the date of dispossession. Without there being any title vested in the respondent/counter-claimant, the First Appellate Court could not have passed a decree for mandatory injunction thereby directing the restoration of possession of the suit property to the respondent/defendant No.1 on the basis of so-called admissions.

20. On the basis of the averments made in the pleadings or evasive denial or absence of specific denial, Court cannot presume title on the respondent for the simple reason that no title can be conferred on the basis of oral testimony or admission made in the pleadings. Title has to be proved by unimpeachable documentary evidence which is lacking in this case.

21. The counter-claim of the respondent/counter-claimant filed in Civil Suit No.399/2012 could not have been decreed by the learned Appellate Court in the absence of documentary evidence proving the title in his favour.

22. In view of the above, the substantial question of law is answered in favour of the appellant/plaintiff. The main judgment decreeing the counter-claim is set aside and the order passed by the learned Trial Court dismissing the counter-claim is restored.

23. The Trial Court record be sent back along with copy of the order.

24. As prayed, copy of the order be given dasti to the parties.

**PRATIBHA RANI
(JUDGE)**

JULY 11, 2017
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